

U.S. DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
RECEIVED

FEB 12 2007

ROBERT H. SWEENEY, CLERK  
BY                      DEPUTY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA

LAKE CHARLES DIVISION

STEVEN RAY BREAUX : DOCKET NO. 2:06-cv-1145  
VS. : Section P  
STEVE TAYLOR, ET AL. : JUDGE TRIMBLE  
: MAGISTRATE JUDGE WILSON

**MEMORANDUM RULING**

Currently before the court is a "Motion to Dismiss" [doc. 21] filed on behalf of defendant Demmick Ewing. In the motion to dismiss, defendant Ewing seeks to have the court dismiss the civil rights action against him due to the plaintiff's failure to serve him with process within 120 days as required by Rule 4(m). In response to the Motion to Dismiss, the plaintiff has filed a motion seeking to have the court find that Ewing has been served through his attorneys or has waived service of process. In the alternative, plaintiff seeks additional time to effect service of process. [doc. 20]. A reply to the plaintiff's opposition has been filed on behalf of Ewing wherein he argues that he has not waived service of process. [doc. 24].

Plaintiff is incarcerated and proceeding *in forma pauperis*, therefore, the government is by statute responsible for service of process in this case. See 28 U.S.C. § 1915(d); Fed.R.Civ.P. Rule 4(c)(2). On October 4, 2006, the court issued an order directing the plaintiff to complete summons forms for the named defendants and to return them to the Clerk of Court within 30 days. [doc. 9]. Plaintiff complied with this order in a timely manner, and summons were issued on October 18, 2006. [doc 10]. The U.S. Marshal attempted to serve Ewing on November 3, 2006 but was unable to do so because he no longer works for the Jennings Police Department.

[doc. 16].

Because the plaintiff complied with the court's order in a timely manner and because the court finds that the failure to perfect service of process on Ewing is not the fault of the plaintiff, it is

ORDERED that the Motion to Dismiss be DENIED.

IT IS FURTHER ORDERED that the attorney for the defendants provide <sup>to plaintiff and the undersigned</sup> the proper name and last known address for defendant Ewing<sup>1</sup> within 15 days of the date of this order so that service of process can be effected on this defendant.

THUS DONE AND SIGNED in Chambers at Lake Charles, Louisiana, this 12<sup>th</sup> day of ~~12~~ February, 2007

  
\_\_\_\_\_  
JAMES T. TRIMBLE, JR.

<sup>1</sup>In the original complaint, this defendant was identified as Demick Hueing. However, it appears as from the various pleadings filed in this matter that the correct name for this defendant is Demmick Ewing.